

AMENDED IN SENATE MAY 7, 2014

SENATE BILL

No. 1412

Introduced by Senator Nielsen

February 21, 2014

An act to amend Sections 1367, 1368, 1368.1, 1369, 1369.1, 1370, 1370.01, 1370.1, 1370.5, 1371, 1373, and 1375.5 of, and to add Sections 1368.2, 1370.02, and 1370.03 Section 1370.02 to, and to repeal Section 1367.1 of, the Penal Code Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1412, as amended, Nielsen. Criminal proceedings: mentally incompetent offenders.

~~Existing~~

(1) *Existing* law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, including, if ~~applicable~~ *applicable*, antipsychotic medication, with the goal of returning the defendant to competency. Existing law credits time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the term of any imprisonment for which the defendant is sentenced.

This bill would, similarly, prohibit a person from having his or her *probation, mandatory supervision, postrelease community supervision* ~~or mandatory supervision~~ *supervision, or parole* revoked while that person is mentally incompetent. The bill would establish a process by which the person's mental competency is evaluated and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the person to competency. This

bill would credit time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the period of revocation or the remaining ~~mandatory supervision~~ term of supervision that was suspended. *If a defendant is found mentally incompetent during postrelease community supervision or parole revocation hearings, the bill would allow the court to order the defendant to undergo treatment, dismiss the pending revocation matter and return the defendant to supervision, in which case the bill would allow the court to modify the terms and conditions of supervision or refer the matter to the public guardian of the county to initiate conservatorship proceedings, or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.* By increasing the duties of local officials, including the county mental health director and county public guardian, this bill would impose a state-mandated local program.

If a person is subject to parole due to a conviction for an offense of first or 2nd degree murder or a registerable sex offense in which one or more of the victims of the offense was a child under 14 years of age, the bill would require court to remand the person to the custody of the Department of Corrections and Rehabilitation upon a finding of probable cause that the person violated a term or condition of parole, if the person is found mentally incompetent.

The bill would also make conforming changes.

(2) During the pendency of an action in a case in which the defendant has been charged with a misdemeanor, if the defendant's behavior leads the judge to conclude that the defendant is mentally disordered and incompetent to stand trial, existing law requires the judge to state the conclusion in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally disordered. Existing law requires the court to order the defendant to be referred for evaluation and treatment, as specified, if counsel for the defendant informs the court that he or she believes the defendant is or may be mentally disordered.

This bill would repeal those provisions.

~~The~~

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1367 of the Penal Code is amended to
2 read:

3 1367. (a) A person cannot be tried or adjudged to punishment
4 or have his or her *probation, mandatory supervision*, postrelease
5 ~~community supervision or mandatory supervision~~ *supervision, or*
6 *parole* revoked while that person is mentally incompetent. A
7 defendant is mentally incompetent for purposes of this chapter if,
8 as a result of mental disorder or developmental disability, the
9 defendant is unable to understand the nature of the criminal
10 proceedings or to assist counsel in the conduct of a defense in a
11 rational manner.

12 (b) Section 1370 shall apply to a person who is charged with a
13 felony *or alleged to have violated the terms of probation or*
14 *mandatory supervision* and is incompetent as a result of a mental
15 disorder. ~~Sections 1367.1 and Section 1370.01 shall apply to a~~
16 ~~person who is charged with a misdemeanor or misdemeanors only,~~
17 ~~or a violation of formal or informal probation for a misdemeanor;~~
18 and the judge finds reason to believe that the defendant is mentally
19 disordered, and may, as a result of the mental disorder, be
20 incompetent to stand trial. Section 1370.1 shall apply to a person
21 who is incompetent as a result of a developmental disability and
22 shall apply to a person who is incompetent as a result of a mental
23 disorder, but is also developmentally disabled. Section 1370.02
24 shall apply to a person ~~whose postrelease community supervision~~
25 ~~has been revoked.~~ *alleged to have violated the terms of his or her*
26 *postrelease community supervision or parole.* ~~Section 1370.03 shall~~
27 ~~apply to a person whose mandatory supervision has been revoked.~~

28 SEC. 2. *Section 1367.1 of the Penal Code is repealed.*

29 ~~1367.1. (a) During the pendency of an action and prior to~~
30 ~~judgment in a case when the defendant has been charged with a~~
31 ~~misdemeanor or misdemeanors only, if the defendant's behavior~~
32 ~~or other evidence leads the judge to conclude that there is reason~~
33 ~~to believe that the defendant is mentally disordered and as a result~~

1 may be incompetent to stand trial, the judge shall state this
2 conclusion and his or her reasons in the record. The judge shall
3 inquire of the attorney for the defendant whether, in the opinion
4 of the attorney, the defendant is mentally disordered. If the
5 defendant is not represented by counsel, the court shall appoint
6 counsel. At the request of the defendant or his or her counsel or
7 upon its own motion, the court shall recess the proceedings for as
8 long as may be reasonably necessary to permit counsel to confer
9 with the defendant and to form an opinion as to whether the
10 defendant is mentally disordered at that time.

11 (b) If counsel informs the court that he or she believes the
12 defendant is or may be mentally disordered, the court shall order
13 that the defendant be referred for evaluation and treatment in
14 accordance with Section 4011.6. If counsel informs the court that
15 he or she believes the defendant is not mentally disordered, the
16 court may nevertheless order that the defendant be referred for
17 evaluation and treatment in accordance with Section 4011.6. The
18 judge may order the facility providing evaluation and treatment
19 to provide the court a copy of the discharge summary at the
20 conclusion of evaluation and treatment.

21 (c) Except as provided in Section 1368.1, when an order for
22 evaluation and treatment in accordance with Section 4011.6 has
23 been issued, all proceedings in the criminal prosecution shall be
24 suspended until the evaluation and treatment has been concluded.

25 If a jury has been impaneled and sworn to try the defendant, the
26 jury may be discharged if it appears to the court that undue hardship
27 to the jurors would result if the jury is retained on call.

28 (d) When evaluation and treatment ordered pursuant to this
29 section has concluded, the defendant shall be returned to court. If
30 it appears to the judge that the defendant is competent to stand
31 trial, the criminal process shall resume, the trial on the offense or
32 offenses charged shall proceed, and judgment may be pronounced.
33 If the judge has reason to believe that the defendant may be
34 incompetent to stand trial despite the treatment ordered pursuant
35 to this section, the judge may order that the question of the
36 defendant's mental competence to stand trial is to be determined
37 in a hearing held pursuant to Sections 1368.1 and 1369. If the
38 defendant is found mentally incompetent, then the provision of
39 Section 1370.01 shall apply.

40 SEC. 3. Section 1368 of the Penal Code is amended to read:

1 1368. (a) If, during the pendency of an action and prior to
2 judgment, *or during revocation proceedings for a violation of*
3 *probation, mandatory supervision, postrelease community*
4 *supervision, or parole*, a doubt arises in the mind of the judge as
5 to the mental competence of the defendant, he or she shall state
6 that doubt in the record and inquire of the attorney for the defendant
7 whether, in the opinion of the attorney, the defendant is mentally
8 competent. If the defendant is not represented by counsel, the court
9 shall appoint counsel. At the request of the defendant or his or her
10 counsel or upon its own motion, the court shall recess the
11 proceedings for as long as may be reasonably necessary to permit
12 counsel to confer with the defendant and to form an opinion as to
13 the mental competence of the defendant at that point in time.

14 (b) If counsel informs the court that he or she believes the
15 defendant is or may be mentally incompetent, the court shall order
16 that the question of the defendant's mental competence is to be
17 determined in a hearing which is held pursuant to Sections 1368.1
18 and 1369. If counsel informs the court that he or she believes the
19 defendant is mentally competent, the court may nevertheless order
20 a hearing. Any hearing shall be held in the superior court.

21 (c) Except as provided in Section 1368.1, when an order for a
22 hearing into the present mental competence of the defendant has
23 been issued, all proceedings in the criminal prosecution shall be
24 suspended until the question of the present mental competence of
25 the defendant has been determined.

26 If a jury has been impaneled and sworn to try the defendant, the
27 jury shall be discharged only if it appears to the court that undue
28 hardship to the jurors would result if the jury is retained on call.

29 If the defendant is declared mentally incompetent, the jury shall
30 be discharged.

31 *SEC. 4. Section 1368.1 of the Penal Code is amended to read:*

32 1368.1. (a) If the action is on a complaint charging a felony,
33 proceedings to determine mental competence shall be held prior
34 to the filing of an information unless the counsel for the defendant
35 requests a preliminary examination under the provisions of Section
36 859b. At such preliminary examination, counsel for the defendant
37 may (1) demur, (2) move to dismiss the complaint on the ground
38 that there is not reasonable cause to believe that a felony has been
39 committed and that the defendant is guilty thereof, or (3) make a
40 motion under Section 1538.5.

(b) If the action is on a complaint charging a misdemeanor, counsel for the defendant may (1) demur, (2) move to dismiss the complaint on the ground that there is not reasonable cause to believe that a public offense has been committed and that the defendant is guilty thereof, or (3) make a motion under Section 1538.5.

(c) *If the proceeding involves an alleged violation of probation, mandatory supervision, postrelease community supervision, or parole, counsel for the defendant may move to reinstate supervision on the ground that there is not probable cause to believe that the defendant violated the terms of his or her supervision.*

(e)

(d) In ruling upon any demurrer or motion described in subdivision ~~(a) or (b)~~, (a), (b), or (c), the court may hear any matter which is capable of fair determination without the personal participation of the defendant.

~~(d)~~

(e) A demurrer or motion described in subdivision ~~(a) or (b)~~ (a), (b), or (c) shall be made in the court having jurisdiction over the complaint. The defendant shall not be certified until the demurrer or motion has been decided.

SEC. 2. Section 1368.2 is added to the Penal Code, to read:

~~1368.2. (a) If, during the pendency of a revocation of postrelease community supervision or mandatory supervision, a doubt arises in the mind of the judge as to the mental competence of the offender, the judge shall state that doubt in the record and inquire of the attorney for the offender whether, in the opinion of the attorney, the offender is mentally competent. If the offender is not represented by counsel, the court shall appoint counsel. At the request of the offender or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the offender and to form an opinion as to the mental competence of the offender at that point in time.~~

~~(b) If counsel informs the court that he or she believes the offender is or may be mentally incompetent, the court shall order that the question of the offender's mental competence be determined in a hearing held pursuant to Section 1369. If counsel informs the court that he or she believes the offender is mentally~~

1 competent, the court may nevertheless order a hearing. The hearing
2 shall be held in the superior court.

3 ~~(e) When an order for a hearing into the present mental~~
4 ~~competence of the offender has been issued, all revocation~~
5 ~~proceedings shall be suspended until the question of the present~~
6 ~~mental competence of the offender has been determined.~~

7 *SEC. 5. Section 1369 of the Penal Code is amended to read:*

8 1369. ~~A~~ Except as stated in subdivision (g), a trial by court or
9 jury of the question of mental competence shall proceed in the
10 following order:

11 (a) The court shall appoint a psychiatrist or licensed
12 psychologist, and any other expert the court may deem appropriate,
13 to examine the defendant. In any case where the defendant or the
14 defendant's counsel informs the court that the defendant is not
15 seeking a finding of mental incompetence, the court shall appoint
16 two psychiatrists, licensed psychologists, or a combination thereof.
17 One of the psychiatrists or licensed psychologists may be named
18 by the defense and one may be named by the prosecution. The
19 examining psychiatrists or licensed psychologists shall evaluate
20 the nature of the defendant's mental disorder, if any, the
21 defendant's ability or inability to understand the nature of the
22 criminal proceedings or assist counsel in the conduct of a defense
23 in a rational manner as a result of a mental disorder and, if within
24 the scope of their licenses and appropriate to their opinions,
25 whether or not treatment with antipsychotic medication is medically
26 appropriate for the defendant and whether antipsychotic medication
27 is likely to restore the defendant to mental competence. If an
28 examining psychologist is of the opinion that antipsychotic
29 medication may be medically appropriate for the defendant and
30 that the defendant should be evaluated by a psychiatrist to
31 determine if antipsychotic medication is medically appropriate,
32 the psychologist shall inform the court of this opinion and his or
33 her recommendation as to whether a psychiatrist should examine
34 the defendant. The examining psychiatrists or licensed
35 psychologists shall also address the issues of whether the defendant
36 has capacity to make decisions regarding antipsychotic medication
37 and whether the defendant is a danger to self or others. If the
38 defendant is examined by a psychiatrist and the psychiatrist forms
39 an opinion as to whether or not treatment with antipsychotic
40 medication is medically appropriate, the psychiatrist shall inform

1 the court of his or her opinions as to the likely or potential side
2 effects of the medication, the expected efficacy of the medication,
3 possible alternative treatments, and whether it is medically
4 appropriate to administer antipsychotic medication in the county
5 jail. If it is suspected the defendant is developmentally disabled,
6 the court shall appoint the director of the regional center for the
7 developmentally disabled established under Division 4.5
8 (commencing with Section 4500) of the Welfare and Institutions
9 Code, or the designee of the director, to examine the defendant.
10 The court may order the developmentally disabled defendant to
11 be confined for examination in a residential facility or state
12 hospital.

13 The regional center director shall recommend to the court a
14 suitable residential facility or state hospital. Prior to issuing an
15 order pursuant to this section, the court shall consider the
16 recommendation of the regional center director. While the person
17 is confined pursuant to order of the court under this section, he or
18 she shall be provided with necessary care and treatment.

19 (b) (1) The counsel for the defendant shall offer evidence in
20 support of the allegation of mental incompetence.

21 (2) If the defense declines to offer any evidence in support of
22 the allegation of mental incompetence, the prosecution may do so.

23 (c) The prosecution shall present its case regarding the issue of
24 the defendant's present mental competence.

25 (d) Each party may offer rebutting testimony, unless the court,
26 for good reason in furtherance of justice, also permits other
27 evidence in support of the original contention.

28 (e) When the evidence is concluded, unless the case is submitted
29 without final argument, the prosecution shall make its final
30 argument and the defense shall conclude with its final argument
31 to the court or jury.

32 (f) In a jury trial, the court shall charge the jury, instructing
33 them on all matters of law necessary for the rendering of a verdict.
34 It shall be presumed that the defendant is mentally competent
35 unless it is proved by a preponderance of the evidence that the
36 defendant is mentally incompetent. The verdict of the jury shall
37 be unanimous.

38 (g) *Only a court trial is required to determine competency in*
39 *any proceeding for a violation of probation, mandatory*
40 *supervision, postrelease community supervision, or parole.*

1 ~~SEC. 3.~~

2 *SEC. 6.* Section 1369.1 of the Penal Code is amended to read:

3 1369.1. (a) As used in this chapter, “treatment facility”
4 includes a county jail. Upon the concurrence of the county board
5 of supervisors, the county mental health director, and the county
6 sheriff, the jail may be designated to provide medically approved
7 medication to defendants found to be mentally incompetent and
8 unable to provide informed consent due to a mental disorder,
9 pursuant to this chapter. In the case of Madera, Napa, and Santa
10 Clara Counties, the concurrence shall be with the board of
11 supervisors, the county mental health director, and the county
12 sheriff or the chief of corrections. The provisions of Sections 1370
13 and 1370.01 shall apply to antipsychotic medications provided in
14 a county jail, provided, however, that the maximum period of time
15 a defendant may be treated in a treatment facility pursuant to this
16 section shall not exceed six months. The provisions of Section
17 1370.02 shall apply to antipsychotic medications provided to a
18 person in a county jail pending revocation of postrelease
19 community supervision, provided, however, that the maximum
20 period of time a defendant may be treated in a treatment facility
21 pursuant to this section shall not exceed one year. The provisions
22 of ~~Section 1370.03~~ 1370 shall apply to antipsychotic medications
23 provided to a person in a county jail pending revocation of
24 mandatory supervision, provided, however, that the maximum
25 period of time a defendant may be treated in a treatment facility
26 pursuant to this section shall not exceed the remaining period of
27 mandatory supervision imposed pursuant to subparagraph (B) of
28 paragraph (5) of subdivision (h) of Section 1170.

29 (b) This section does not abrogate or limit any law enacted to
30 ensure the due process rights set forth in *Sell v. United States*
31 (2003) 539 U.S. 166.

32 (c) This section shall remain in effect only until January 1, 2016,
33 and as of that date is repealed, unless a later enacted statute, that
34 is enacted before January 1, 2016, deletes or extends that date.

35 *SEC. 7. Section 1370 of the Penal Code is amended to read:*

36 1370. (a) (1) (A) If the defendant is found mentally
37 competent, the criminal process shall resume, the trial on the
38 offense charged *or hearing on the alleged violation* shall proceed,
39 and judgment may be pronounced.

1 (B) If the defendant is found mentally incompetent, the trial,
2 *the hearing on the alleged violation*, or *the judgment* shall be
3 suspended until the person becomes mentally competent.

4 (i) In the meantime, the court shall order that the mentally
5 incompetent defendant be delivered by the sheriff to a state hospital
6 for the care and treatment of the mentally disordered, or to any
7 other available public or private treatment facility, including a
8 local county jail treatment facility, approved by the community
9 program director that will promote the defendant's speedy
10 restoration to mental competence, or placed on outpatient status
11 as specified in Section 1600.

12 (ii) However, if the action against the defendant who has been
13 found mentally incompetent is on a complaint charging a felony
14 offense specified in Section 290, the prosecutor shall determine
15 whether the defendant previously has been found mentally
16 incompetent to stand trial pursuant to this chapter on a charge of
17 a Section 290 offense, or whether the defendant is currently the
18 subject of a pending Section 1368 proceeding arising out of a
19 charge of a Section 290 offense. If either determination is made,
20 the prosecutor shall so notify the court and defendant in writing.
21 After this notification, and opportunity for hearing, the court shall
22 order that the defendant be delivered by the sheriff to a state
23 hospital or other secure treatment facility for the care and treatment
24 of the mentally disordered unless the court makes specific findings
25 on the record that an alternative placement would provide more
26 appropriate treatment for the defendant and would not pose a
27 danger to the health and safety of others.

28 (iii) If the action against the defendant who has been found
29 mentally incompetent is on a complaint charging a felony offense
30 specified in Section 290 and the defendant has been denied bail
31 pursuant to subdivision (b) of Section 12 of Article I of the
32 California Constitution because the court has found, based upon
33 clear and convincing evidence, a substantial likelihood that the
34 person's release would result in great bodily harm to others, the
35 court shall order that the defendant be delivered by the sheriff to
36 a state hospital for the care and treatment of the mentally disordered
37 unless the court makes specific findings on the record that an
38 alternative placement would provide more appropriate treatment
39 for the defendant and would not pose a danger to the health and
40 safety of others.

1 (iv) The clerk of the court shall notify the Department of Justice
2 in writing of any finding of mental incompetence with respect to
3 a defendant who is subject to clause (ii) or (iii) for inclusion in his
4 or her state summary criminal history information.

5 (C) Upon the filing of a certificate of restoration to competence,
6 the court shall order that the defendant be returned to court in
7 accordance with Section 1372. The court shall transmit a copy of
8 its order to the community program director or a designee.

9 (D) A defendant charged with a violent felony may not be
10 delivered to a state hospital or treatment facility pursuant to this
11 subdivision unless the state hospital or treatment facility has a
12 secured perimeter or a locked and controlled treatment facility,
13 and the judge determines that the public safety will be protected.

14 (E) For purposes of this paragraph, “violent felony” means an
15 offense specified in subdivision (c) of Section 667.5.

16 (F) A defendant charged with a violent felony may be placed
17 on outpatient status, as specified in Section 1600, only if the court
18 finds that the placement will not pose a danger to the health or
19 safety of others. If the court places a defendant charged with a
20 violent felony on outpatient status, as specified in Section 1600,
21 the court must serve copies of the placement order on defense
22 counsel, the sheriff in the county where the defendant will be
23 placed and the district attorney for the county in which the violent
24 felony charges are pending against the defendant.

25 (2) Prior to making the order directing that the defendant be
26 confined in a state hospital or other treatment facility or placed on
27 outpatient status, the court shall proceed as follows:

28 (A) The court shall order the community program director or a
29 designee to evaluate the defendant and to submit to the court within
30 15 judicial days of the order a written recommendation as to
31 whether the defendant should be required to undergo outpatient
32 treatment, or committed to a state hospital or to any other treatment
33 facility. No person shall be admitted to a state hospital or other
34 treatment facility or placed on outpatient status under this section
35 without having been evaluated by the community program director
36 or a designee. The community program director or designee shall
37 evaluate the appropriate placement for the defendant between a
38 state hospital or a local county jail treatment facility based upon
39 guidelines provided by the State Department of State Hospitals.
40 If a local county jail treatment facility is selected, the State

1 Department of State Hospitals shall provide treatment at the county
2 jail treatment facility and reimburse the county jail treatment
3 facility for the reasonable costs of the bed during the treatment.
4 The six-month limitation in Section 1369.1 shall not apply to
5 individuals deemed incompetent to stand trial who are being treated
6 to restore competency within a county jail treatment facility
7 pursuant to this section.

8 (B) The court shall hear and determine whether the defendant
9 lacks capacity to make decisions regarding the administration of
10 antipsychotic medication, and shall proceed as follows:

11 (i) The court shall hear and determine whether any of the
12 following is true:

13 (I) The defendant lacks capacity to make decisions regarding
14 antipsychotic medication, the defendant's mental disorder requires
15 medical treatment with antipsychotic medication, and, if the
16 defendant's mental disorder is not treated with antipsychotic
17 medication, it is probable that serious harm to the physical or
18 mental health of the patient will result. Probability of serious harm
19 to the physical or mental health of the defendant requires evidence
20 that the defendant is presently suffering adverse effects to his or
21 her physical or mental health, or the defendant has previously
22 suffered these effects as a result of a mental disorder and his or
23 her condition is substantially deteriorating. The fact that a
24 defendant has a diagnosis of a mental disorder does not alone
25 establish probability of serious harm to the physical or mental
26 health of the defendant.

27 (II) The defendant is a danger to others, in that the defendant
28 has inflicted, attempted to inflict, or made a serious threat of
29 inflicting substantial physical harm on another while in custody,
30 or the defendant had inflicted, attempted to inflict, or made a
31 serious threat of inflicting substantial physical harm on another
32 that resulted in his or her being taken into custody, and the
33 defendant presents, as a result of mental disorder or mental defect,
34 a demonstrated danger of inflicting substantial physical harm on
35 others. Demonstrated danger may be based on an assessment of
36 the defendant's present mental condition, including a consideration
37 of past behavior of the defendant within six years prior to the time
38 the defendant last attempted to inflict, inflicted, or threatened to
39 inflict substantial physical harm on another, and other relevant
40 evidence.

1 (III) The people have charged the defendant with a serious crime
2 against the person or property, involuntary administration of
3 antipsychotic medication is substantially likely to render the
4 defendant competent to stand trial, the medication is unlikely to
5 have side effects that interfere with the defendant's ability to
6 understand the nature of the criminal proceedings or to assist
7 counsel in the conduct of a defense in a reasonable manner, less
8 intrusive treatments are unlikely to have substantially the same
9 results, and antipsychotic medication is in the patient's best medical
10 interest in light of his or her medical condition.

11 (ii) If the court finds any of the conditions described in clause
12 (i) to be true, the court shall issue an order authorizing the treatment
13 facility to involuntarily administer antipsychotic medication to the
14 defendant when and as prescribed by the defendant's treating
15 psychiatrist. The court shall not order involuntary administration
16 of psychotropic medication under subclause (III) of clause (i)
17 unless the court has first found that the defendant does not meet
18 the criteria for involuntary administration of psychotropic
19 medication under subclause (I) of clause (i) and does not meet the
20 criteria under subclause (II) of clause (i).

21 (iii) In all cases, the treating hospital, facility, or program may
22 administer medically appropriate antipsychotic medication
23 prescribed by a psychiatrist in an emergency as described in
24 subdivision (m) of Section 5008 of the Welfare and Institutions
25 Code.

26 (iv) If the court has determined that the defendant has the
27 capacity to make decisions regarding antipsychotic medication,
28 and if the defendant, with advice of his or her counsel, consents,
29 the court order of commitment shall include confirmation that
30 antipsychotic medication may be given to the defendant as
31 prescribed by a treating psychiatrist pursuant to the defendant's
32 consent. The commitment order shall also indicate that, if the
33 defendant withdraws consent for antipsychotic medication, after
34 the treating psychiatrist complies with the provisions of
35 subparagraph (C), the defendant shall be returned to court for a
36 hearing in accordance with subparagraphs (C) and (D) regarding
37 whether antipsychotic medication shall be administered
38 involuntarily.

39 (v) If the court has determined that the defendant has the
40 capacity to make decisions regarding antipsychotic medication

1 and if the defendant, with advice from his or her counsel, does not
2 consent, the court order for commitment shall indicate that, after
3 the treating psychiatrist complies with the provisions of
4 subparagraph (C), the defendant shall be returned to court for a
5 hearing in accordance with subparagraphs (C) and (D) regarding
6 whether antipsychotic medication shall be administered
7 involuntarily.

8 (vi) Any report made pursuant to paragraph (1) of subdivision
9 (b) shall include a description of any antipsychotic medication
10 administered to the defendant and its effects and side effects,
11 including effects on the defendant's appearance or behavior that
12 would affect the defendant's ability to understand the nature of
13 the criminal proceedings or to assist counsel in the conduct of a
14 defense in a reasonable manner. During the time the defendant is
15 confined in a state hospital or other treatment facility or placed on
16 outpatient status, either the defendant or the people may request
17 that the court review any order made pursuant to this subdivision.
18 The defendant, to the same extent enjoyed by other patients in the
19 state hospital or other treatment facility, shall have the right to
20 contact the patients' rights advocate regarding his or her rights
21 under this section.

22 (C) If the defendant consented to antipsychotic medication as
23 described in clause (iv) of subparagraph (B), but subsequently
24 withdraws his or her consent, or, if involuntary antipsychotic
25 medication was not ordered pursuant to clause (v) of subparagraph
26 (B), and the treating psychiatrist determines that antipsychotic
27 medication has become medically necessary and appropriate, the
28 treating psychiatrist shall make efforts to obtain informed consent
29 from the defendant for antipsychotic medication. If informed
30 consent is not obtained from the defendant, and the treating
31 psychiatrist is of the opinion that the defendant lacks capacity to
32 make decisions regarding antipsychotic medication based on the
33 conditions described in subclause (I) or (II) of clause (i) of
34 subparagraph (B), the treating psychiatrist shall certify whether
35 the lack of capacity and any applicable conditions described above
36 exist. That certification shall contain an assessment of the current
37 mental status of the defendant and the opinion of the treating
38 psychiatrist that involuntary antipsychotic medication has become
39 medically necessary and appropriate.

(D) (i) If the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate pursuant to subparagraph (C), antipsychotic medication may be administered to the defendant for not more than 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment. The treating psychiatrist shall present the case for the certification for involuntary treatment and the defendant shall be represented by an attorney or a patients' rights advocate. The attorney or patients' rights advocate shall be appointed to meet with the defendant no later than one day prior to the medication review hearing to review the defendant's rights at the medication review hearing, discuss the process, answer questions or concerns regarding involuntary medication or the hearing, assist the defendant in preparing for the hearing and advocating for his or her interests at the hearing, review the panel's final determination following the hearing, advise the defendant of his or her right to judicial review of the panel's decision, and provide the defendant with referral information for legal advice on the subject. The defendant shall also have the following rights with respect to the medication review hearing:

- (I) To being given timely access to the defendant's records.
- (II) To be present at the hearing, unless the defendant waives that right.
- (III) To present evidence at the hearing.
- (IV) To question persons presenting evidence supporting involuntary medication.
- (V) To make reasonable requests for attendance of witnesses on the defendant's behalf.
- (VI) To a hearing conducted in an impartial and informal manner.

(ii) If the administrative law judge determines that the defendant either meets the criteria specified in subclause (I) of clause (i) of subparagraph (B), or meets the criteria specified in subclause (II) of clause (i) of subparagraph (B), then antipsychotic medication may continue to be administered to the defendant for the 21-day certification period. Concurrently with the treating psychiatrist's certification, the treating psychiatrist shall file a copy of the certification and a petition with the court for issuance of an order

1 to administer antipsychotic medication beyond the 21-day
2 certification period. For purposes of this subparagraph, the treating
3 psychiatrist shall not be required to pay or deposit any fee for the
4 filing of the petition or other document or paper related to the
5 petition.

6 (iii) If the administrative law judge disagrees with the
7 certification, medication may not be administered involuntarily
8 until the court determines that antipsychotic medication should be
9 administered pursuant to this section.

10 (iv) The court shall provide notice to the prosecuting attorney
11 and to the attorney representing the defendant, and shall hold a
12 hearing, no later than 18 days from the date of the certification, to
13 determine whether antipsychotic medication should be ordered
14 beyond the certification period.

15 (v) If, as a result of the hearing, the court determines that
16 antipsychotic medication should be administered beyond the
17 certification period, the court shall issue an order authorizing the
18 administration of that medication.

19 (vi) The court shall render its decision on the petition and issue
20 its order no later than three calendar days after the hearing and, in
21 any event, no later than the expiration of the 21-day certification
22 period.

23 (3) When the court orders that the defendant be confined in a
24 state hospital or other public or private treatment facility, the court
25 shall provide copies of the following documents which shall be
26 taken with the defendant to the state hospital or other treatment
27 facility where the defendant is to be confined:

28 (A) The commitment order, including a specification of the
29 charges.

30 (B) A computation or statement setting forth the maximum term
31 of commitment in accordance with subdivision (c).

32 (C) A computation or statement setting forth the amount of
33 credit for time served, if any, to be deducted from the maximum
34 term of commitment.

35 (D) State summary criminal history information.

36 (E) Any arrest reports prepared by the police department or
37 other law enforcement agency.

38 (F) Any court-ordered psychiatric examination or evaluation
39 reports.

1 (G) The community program director's placement
2 recommendation report.

3 (H) Records of any finding of mental incompetence pursuant
4 to this chapter arising out of a complaint charging a felony offense
5 specified in Section 290 or any pending Section 1368 proceeding
6 arising out of a charge of a Section 290 offense.

7 (4) When the defendant is committed to a treatment facility
8 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
9 court makes the findings specified in clause (ii) or (iii) of
10 subparagraph (B) of paragraph (1) to assign the defendant to a
11 treatment facility other than a state hospital or other secure
12 treatment facility, the court shall order that notice be given to the
13 appropriate law enforcement agency or agencies having local
14 jurisdiction at the site of the placement facility of any finding of
15 mental incompetence pursuant to this chapter arising out of a
16 charge of a Section 290 offense.

17 (5) When directing that the defendant be confined in a state
18 hospital pursuant to this subdivision, the court shall select the
19 hospital in accordance with the policies established by the State
20 Department of State Hospitals.

21 (6) (A) If the defendant is committed or transferred to a state
22 hospital pursuant to this section, the court may, upon receiving the
23 written recommendation of the medical director of the state hospital
24 and the community program director that the defendant be
25 transferred to a public or private treatment facility approved by
26 the community program director, order the defendant transferred
27 to that facility. If the defendant is committed or transferred to a
28 public or private treatment facility approved by the community
29 program director, the court may, upon receiving the written
30 recommendation of the community program director, transfer the
31 defendant to a state hospital or to another public or private
32 treatment facility approved by the community program director.
33 In the event of dismissal of the criminal charges before the
34 defendant recovers competence, the person shall be subject to the
35 applicable provisions of the Lanterman-Petris-Short Act (Part 1
36 commencing with Section 5000) of Division 5 of the Welfare and
37 Institutions Code). Where either the defendant or the prosecutor
38 chooses to contest either kind of order of transfer, a petition may
39 be filed in the court for a hearing, which shall be held if the court
40 determines that sufficient grounds exist. At the hearing, the

1 prosecuting attorney or the defendant may present evidence bearing
2 on the order of transfer. The court shall use the same standards as
3 are used in conducting probation revocation hearings pursuant to
4 Section 1203.2.

5 Prior to making an order for transfer under this section, the court
6 shall notify the defendant, the attorney of record for the defendant,
7 the prosecuting attorney, and the community program director or
8 a designee.

9 (B) If the defendant is initially committed to a state hospital or
10 secure treatment facility pursuant to clause (ii) or (iii) of
11 subparagraph (B) of paragraph (1) and is subsequently transferred
12 to any other facility, copies of the documents specified in paragraph
13 (3) shall be taken with the defendant to each subsequent facility
14 to which the defendant is transferred. The transferring facility shall
15 also notify the appropriate law enforcement agency or agencies
16 having local jurisdiction at the site of the new facility that the
17 defendant is a person subject to clause (ii) or (iii) of subparagraph
18 (B) of paragraph (1).

19 (7) An order by the court authorizing involuntary medication
20 of the defendant shall be valid for no more than one year. The
21 court shall review the order six months after the order was made
22 to determine if the grounds for the authorization remain. In the
23 review, the court shall consider the reports of the treating
24 psychiatrist or psychiatrists and the defendant's patients' rights
25 advocate or attorney. The court may require testimony from the
26 treating psychiatrist or psychiatrists and the patients' rights
27 advocate or attorney, if necessary. The court may continue the
28 order authorizing involuntary medication for up to another six
29 months, or vacate the order, or make any other appropriate order.

30 (b) (1) Within 90 days of a commitment made pursuant to
31 subdivision (a), the medical director of the state hospital or other
32 treatment facility to which the defendant is confined shall make a
33 written report to the court and the community program director
34 for the county or region of commitment, or a designee, concerning
35 the defendant's progress toward recovery of mental competence.
36 Where the defendant is on outpatient status, the outpatient treatment
37 staff shall make a written report to the community program director
38 concerning the defendant's progress toward recovery of mental
39 competence. Within 90 days of placement on outpatient status, the
40 community program director shall report to the court on this matter.

1 If the defendant has not recovered mental competence, but the
2 report discloses a substantial likelihood that the defendant will
3 regain mental competence in the foreseeable future, the defendant
4 shall remain in the state hospital or other treatment facility or on
5 outpatient status. Thereafter, at six-month intervals or until the
6 defendant becomes mentally competent, where the defendant is
7 confined in a treatment facility, the medical director of the hospital
8 or person in charge of the facility shall report in writing to the
9 court and the community program director or a designee regarding
10 the defendant's progress toward recovery of mental competence.
11 Where the defendant is on outpatient status, after the initial 90-day
12 report, the outpatient treatment staff shall report to the community
13 program director on the defendant's progress toward recovery,
14 and the community program director shall report to the court on
15 this matter at six-month intervals. A copy of these reports shall be
16 provided to the prosecutor and defense counsel by the court. If the
17 report indicates that there is no substantial likelihood that the
18 defendant will regain mental competence in the foreseeable future,
19 the committing court shall order the defendant to be returned to
20 the court for proceedings pursuant to paragraph (2) of subdivision
21 (c). The court shall transmit a copy of its order to the community
22 program director or a designee.

23 (2) Where the court has issued an order authorizing the treating
24 facility to involuntarily administer antipsychotic medication to the
25 defendant, the reports made at six-month intervals concerning the
26 defendant's progress toward regaining competency shall also
27 consider the issue of involuntary medication. Each report shall
28 include, but is not limited to, all the following:

29 (A) Whether or not the defendant has the capacity to make
30 decisions concerning antipsychotic medication.

31 (B) If the defendant lacks capacity to make decisions concerning
32 antipsychotic medication, whether the defendant risks serious harm
33 to his or her physical or mental health if not treated with
34 antipsychotic medication.

35 (C) Whether or not the defendant presents a danger to others if
36 he or she is not treated with antipsychotic medication.

37 (D) Whether the defendant has a mental illness for which
38 medications are the only effective treatment.

1 (E) Whether there are any side effects from the medication
2 currently being experienced by the defendant that would interfere
3 with the defendant's ability to collaborate with counsel.

4 (F) Whether there are any effective alternatives to medication.

5 (G) How quickly the medication is likely to bring the defendant
6 to competency.

7 (H) Whether the treatment plan includes methods other than
8 medication to restore the defendant to competency.

9 (I) A statement, if applicable, that no medication is likely to
10 restore the defendant to competency.

11 (3) After reviewing the reports, the court shall determine whether
12 or not grounds for the order authorizing involuntary administration
13 of antipsychotic medication still exist and shall do one of the
14 following:

15 (A) If the original grounds for involuntary medication still exist,
16 the order authorizing the treating facility to involuntarily administer
17 antipsychotic medication to the defendant shall remain in effect.

18 (B) If the original grounds for involuntary medication no longer
19 exist, and there is no other basis for involuntary administration of
20 antipsychotic medication, the order for the involuntary
21 administration of antipsychotic medication shall be vacated.

22 (C) If the original grounds for involuntary medication no longer
23 exist, and the report states that there is another basis for involuntary
24 administration of antipsychotic medication, the court shall set a
25 hearing within 21 days to determine whether the order for the
26 involuntary administration of antipsychotic medication shall be
27 vacated or whether a new order for the involuntary administration
28 of antipsychotic medication shall be issued. The hearing shall
29 proceed as set forth in subparagraph (B) of paragraph (2) of
30 subdivision (a).

31 (4) Any defendant who has been committed or has been on
32 outpatient status for 18 months and is still hospitalized or on
33 outpatient status shall be returned to the committing court where
34 a hearing shall be held pursuant to the procedures set forth in
35 Section 1369. The court shall transmit a copy of its order to the
36 community program director or a designee.

37 (5) If it is determined by the court that no treatment for the
38 defendant's mental impairment is being conducted, the defendant
39 shall be returned to the committing court. The court shall transmit

1 a copy of its order to the community program director or a
2 designee.

3 (6) At each review by the court specified in this subdivision,
4 the court shall determine if the security level of housing and
5 treatment is appropriate and may make an order in accordance
6 with its determination. If the court determines that the defendant
7 shall continue to be treated in the state hospital or on an outpatient
8 basis, the court shall determine issues concerning administration
9 of antipsychotic medication, as set forth in subparagraph (B) of
10 paragraph (2) of subdivision (a).

11 (c) (1) At the end of three years from the date of commitment
12 or a period of commitment equal to the maximum term of
13 imprisonment provided by law for the most serious offense charged
14 in the information, indictment, or misdemeanor complaint, *or the*
15 *maximum term of imprisonment provided by law for a violation*
16 *of probation or mandatory supervision*, whichever is shorter, a
17 defendant who has not recovered mental competence shall be
18 returned to the committing court. The court shall notify the
19 community program director or a designee of the return and of
20 any resulting court orders.

21 (2) Whenever any defendant is returned to the court pursuant
22 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this
23 subdivision and it appears to the court that the defendant is gravely
24 disabled, as defined in subparagraph (B) of paragraph (1) of
25 subdivision (h) of Section 5008 of the Welfare and Institutions
26 Code, the court shall order the conservatorship investigator of the
27 county of commitment of the defendant to initiate conservatorship
28 proceedings for the defendant pursuant to Chapter 3 (commencing
29 with Section 5350) of Part 1 of Division 5 of the Welfare and
30 Institutions Code. Any hearings required in the conservatorship
31 proceedings shall be held in the superior court in the county that
32 ordered the commitment. The court shall transmit a copy of the
33 order directing initiation of conservatorship proceedings to the
34 community program director or a designee, the sheriff and the
35 district attorney of the county in which criminal charges are
36 pending, and the defendant's counsel of record. The court shall
37 notify the community program director or a designee, the sheriff
38 and district attorney of the county in which criminal charges are
39 pending, and the defendant's counsel of record of the outcome of
40 the conservatorship proceedings.

(3) If a change in placement is proposed for a defendant who is committed pursuant to subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall provide notice and an opportunity to be heard with respect to the proposed placement of the defendant to the sheriff and the district attorney of the county in which *the* criminal charges *or revocation proceedings* are pending.

(4) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) ~~The~~ *With the exception of proceedings alleging a violation of mandatory supervision, the* criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee. *In a proceeding alleging a violation of mandatory supervision, if the court finds that the person is not gravely disabled as described in paragraph (2) of subdivision (c), the court shall reinstate mandatory supervision and may modify the terms and conditions of supervision to include appropriate mental health treatment or refer the matter to a local mental health court, reentry court, or other collaborative justice court available for improving the mental health of the defendant.*

(e) If the criminal ~~charge~~ *action* against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of State Hospitals pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter

3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

(h) Nothing in this section shall preclude a defendant from filing a petition for habeas corpus to challenge the continuing validity of an order authorizing a treatment facility or outpatient program to involuntarily administer antipsychotic medication to a person being treated as incompetent to stand trial.

~~(i) This section shall become operative on July 1, 2012.~~

SEC. 8. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) (1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent, ~~the trial or trial~~, judgment, *or hearing on the alleged violation* shall be suspended until the person becomes mentally competent, and the court shall order that (A) in the meantime, the defendant be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in this section, and (B) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the county mental health director or his or her designee.

(2) Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee. No person shall be admitted to a state hospital under this section unless the county mental health director finds that there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of State Hospitals for these placements.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration

1 of past behavior of the defendant within six years prior to the time
2 the defendant last attempted to inflict, inflicted, or threatened to
3 inflict substantial physical harm on another, and other relevant
4 evidence.

5 (III) The people have charged the defendant with a serious crime
6 against the person or property; involuntary administration of
7 antipsychotic medication is substantially likely to render the
8 defendant competent to stand trial; the medication is unlikely to
9 have side effects that interfere with the defendant's ability to
10 understand the nature of the criminal proceedings or to assist
11 counsel in the conduct of a defense in a reasonable manner; less
12 intrusive treatments are unlikely to have substantially the same
13 results; and antipsychotic medication is in the patient's best medical
14 interest in light of his or her medical condition.

15 (iii) If the court finds any of the conditions described in clause
16 (ii) to be true, the court shall issue an order authorizing the
17 treatment facility to involuntarily administer antipsychotic
18 medication to the defendant when and as prescribed by the
19 defendant's treating psychiatrist. The court shall not order
20 involuntary administration of psychotropic medication under
21 subclause (III) of clause (ii) unless the court has first found that
22 the defendant does not meet the criteria for involuntary
23 administration of psychotropic medication under subclause (I) of
24 clause (ii) and does not meet the criteria under subclause (II) of
25 clause (ii).

26 (iv) In all cases, the treating hospital, facility, or program may
27 administer medically appropriate antipsychotic medication
28 prescribed by a psychiatrist in an emergency as described in
29 subdivision (m) of Section 5008 of the Welfare and Institutions
30 Code.

31 (v) Any report made pursuant to subdivision (b) shall include
32 a description of any antipsychotic medication administered to the
33 defendant and its effects and side effects, including effects on the
34 defendant's appearance or behavior that would affect the
35 defendant's ability to understand the nature of the criminal
36 proceedings or to assist counsel in the conduct of a defense in a
37 reasonable manner. During the time the defendant is confined in
38 a state hospital or other treatment facility or placed on outpatient
39 status, either the defendant or the people may request that the court
40 review any order made pursuant to this subdivision. The defendant,

1 to the same extent enjoyed by other patients in the state hospital
2 or other treatment facility, shall have the right to contact the
3 Patients' Rights Advocate regarding his or her rights under this
4 section.

5 (C) If the defendant consented to antipsychotic medication as
6 described in clause (i) of subparagraph (B), but subsequently
7 withdraws his or her consent, or, if involuntary antipsychotic
8 medication was not ordered pursuant to clause (ii) of subparagraph
9 (B), and the treating psychiatrist determines that antipsychotic
10 medication has become medically necessary and appropriate, the
11 treating psychiatrist shall make efforts to obtain informed consent
12 from the defendant for antipsychotic medication. If informed
13 consent is not obtained from the defendant, and the treating
14 psychiatrist is of the opinion that the defendant lacks capacity to
15 make decisions regarding antipsychotic medication as specified
16 in subclause (I) of clause (ii) of subparagraph (B), or that the
17 defendant is a danger to others as specified in subclause (II) of
18 clause (ii) of subparagraph (B), the committing court shall be
19 notified of this, including an assessment of the current mental
20 status of the defendant and the opinion of the treating psychiatrist
21 that involuntary antipsychotic medication has become medically
22 necessary and appropriate. The court shall provide copies of the
23 report to the prosecuting attorney and to the attorney representing
24 the defendant and shall set a hearing to determine whether
25 involuntary antipsychotic medication should be ordered in the
26 manner described in subparagraph (B).

27 (3) When the court, after considering the placement
28 recommendation of the county mental health director required in
29 paragraph (2), orders that the defendant be confined in a public or
30 private treatment facility, the court shall provide copies of the
31 following documents which shall be taken with the defendant to
32 the treatment facility where the defendant is to be confined:

33 (A) The commitment order, including a specification of the
34 charges.

35 (B) A computation or statement setting forth the maximum term
36 of commitment in accordance with subdivision (c).

37 (C) A computation or statement setting forth the amount of
38 credit for time served, if any, to be deducted from the maximum
39 term of commitment.

40 (D) State summary criminal history information.

1 (E) Any arrest reports prepared by the police department or
2 other law enforcement agency.

3 (F) Any court-ordered psychiatric examination or evaluation
4 reports.

5 (G) The county mental health director's placement
6 recommendation report.

7 (4) A person subject to commitment under this section may be
8 placed on outpatient status under the supervision of the county
9 mental health director or his or her designee by order of the court
10 in accordance with the procedures contained in Title 15
11 (commencing with Section 1600) except that where the term
12 "community program director" appears the term "county mental
13 health director" shall be substituted.

14 (5) If the defendant is committed or transferred to a public or
15 private treatment facility approved by the county mental health
16 director, the court may, upon receiving the written recommendation
17 of the county mental health director, transfer the defendant to
18 another public or private treatment facility approved by the county
19 mental health director. In the event of dismissal of the criminal
20 charges before the defendant recovers competence, the person
21 shall be subject to the applicable provisions of Part 1 (commencing
22 with Section 5000) of Division 5 of the Welfare and Institutions
23 Code. Where either the defendant or the prosecutor chooses to
24 contest the order of transfer, a petition may be filed in the court
25 for a hearing, which shall be held if the court determines that
26 sufficient grounds exist. At the hearing, the prosecuting attorney
27 or the defendant may present evidence bearing on the order of
28 transfer. The court shall use the same standards as are used in
29 conducting probation revocation hearings pursuant to Section
30 1203.2.

31 Prior to making an order for transfer under this section, the court
32 shall notify the defendant, the attorney of record for the defendant,
33 the prosecuting attorney, and the county mental health director or
34 his or her designee.

35 (b) Within 90 days of a commitment made pursuant to
36 subdivision (a), the medical director of the treatment facility to
37 which the defendant is confined shall make a written report to the
38 court and the county mental health director or his or her designee,
39 concerning the defendant's progress toward recovery of mental
40 competence. Where the defendant is on outpatient status, the

1 outpatient treatment staff shall make a written report to the county
2 mental health director concerning the defendant's progress toward
3 recovery of mental competence. Within 90 days of placement on
4 outpatient status, the county mental health director shall report to
5 the court on this matter. If the defendant has not recovered mental
6 competence, but the report discloses a substantial likelihood that
7 the defendant will regain mental competence in the foreseeable
8 future, the defendant shall remain in the treatment facility or on
9 outpatient status. Thereafter, at six-month intervals or until the
10 defendant becomes mentally competent, where the defendant is
11 confined in a treatment facility, the medical director of the hospital
12 or person in charge of the facility shall report in writing to the
13 court and the county mental health director or a designee regarding
14 the defendant's progress toward recovery of mental competence.
15 Where the defendant is on outpatient status, after the initial 90-day
16 report, the outpatient treatment staff shall report to the county
17 mental health director on the defendant's progress toward recovery,
18 and the county mental health director shall report to the court on
19 this matter at six-month intervals. A copy of these reports shall be
20 provided to the prosecutor and defense counsel by the court. If the
21 report indicates that there is no substantial likelihood that the
22 defendant will regain mental competence in the foreseeable future,
23 the committing court shall order the defendant to be returned to
24 the court for proceedings pursuant to paragraph (2) of subdivision
25 (c). The court shall transmit a copy of its order to the county mental
26 health director or his or her designee.

27 (c) (1) If, at the end of one year from the date of commitment
28 or a period of commitment equal to the maximum term of
29 imprisonment provided by law for the most serious offense charged
30 in the misdemeanor complaint, whichever is shorter, the defendant
31 has not recovered mental competence, the defendant shall be
32 returned to the committing court. The court shall notify the county
33 mental health director or his or her designee of the return and of
34 any resulting court orders.

35 (2) Whenever any defendant is returned to the court pursuant
36 to subdivision (b) or paragraph (1) of this subdivision and it appears
37 to the court that the defendant is gravely disabled, as defined in
38 subparagraph (A) of paragraph (1) of subdivision (h) of Section
39 5008 of the Welfare and Institutions Code, the court shall order
40 the conservatorship investigator of the county of commitment of

1 the defendant to initiate conservatorship proceedings for the
2 defendant pursuant to Chapter 3 (commencing with Section 5350)
3 of Part 1 of Division 5 of the Welfare and Institutions Code. Any
4 hearings required in the conservatorship proceedings shall be held
5 in the superior court in the county that ordered the commitment.
6 The court shall transmit a copy of the order directing initiation of
7 conservatorship proceedings to the county mental health director
8 or his or her designee and shall notify the county mental health
9 director or his or her designee of the outcome of the proceedings.

10 (d) The criminal action remains subject to dismissal pursuant
11 to Section 1385. If the criminal action is dismissed, the court shall
12 transmit a copy of the order of dismissal to the county mental
13 health director or his or her designee.

14 (e) If the criminal charge against the defendant is dismissed,
15 the defendant shall be released from any commitment ordered
16 under this section, but without prejudice to the initiation of any
17 proceedings which may be appropriate under Part 1 (commencing
18 with Section 5000) of Division 5 of the Welfare and Institutions
19 Code.

20 ~~SEC. 4.— Section 1370.02 is added to the Penal Code, to read:~~

21 ~~1370.02. (a) (1) If the offender is found mentally competent,~~
22 ~~the postrelease community supervision revocation proceedings~~
23 ~~shall resume. If the offender is found mentally incompetent, the~~
24 ~~revocation proceedings shall be suspended until the person becomes~~
25 ~~mentally competent, and the court shall order that, in the meantime,~~
26 ~~the offender be delivered by the sheriff to an available public or~~
27 ~~private treatment facility, approved by the county mental health~~
28 ~~director, that will promote the offender's speedy restoration to~~
29 ~~mental competence, or placed on outpatient status as specified in~~
30 ~~this section. Upon the filing of a certificate of restoration to~~
31 ~~competence, the offender shall be returned to court in accordance~~
32 ~~with Section 1372. The court shall transmit a copy of its order to~~
33 ~~the county mental health director or his or her designee.~~

34 ~~(2) Prior to making the order directing that the offender be~~
35 ~~confined in a treatment facility or placed on outpatient status, the~~
36 ~~court shall do all of the following:~~

37 ~~(A) Order the county mental health director, or his or her~~
38 ~~designee, to evaluate the offender and to submit to the court within~~
39 ~~15 business days of the order a written recommendation as to~~
40 ~~whether the offender should be required to undergo outpatient~~

1 treatment or committed to a treatment facility. A person shall not
2 be admitted to a treatment facility or placed on outpatient status
3 under this section without having been evaluated by the county
4 mental health director or his or her designee. A person shall not
5 be admitted to a state hospital under this section unless the county
6 mental health director finds that there is no less restrictive
7 appropriate placement available and the county mental health
8 director has a contract with the State Department of State Hospitals
9 for these placements.

10 (B) Hear and determine whether the offender, with advice of
11 his or her counsel, consents to the administration of antipsychotic
12 medication.

13 (i) If the offender, with advice of his or her counsel, consents
14 to the administration of antipsychotic medication, the court order
15 of commitment shall include confirmation that antipsychotic
16 medication may be given to the offender as prescribed by a treating
17 psychiatrist. The commitment order shall also indicate that, if the
18 offender withdraws consent for antipsychotic medication after the
19 treating psychiatrist complies with the provisions of subparagraph
20 (C), the offender shall be returned to court for a hearing in
21 accordance with this subdivision regarding whether antipsychotic
22 medication shall be administered involuntarily.

23 (ii) If the offender does not consent to the administration of
24 antipsychotic medication, the court shall hear and determine
25 whether any of the following are true:

26 (I) The offender lacks capacity to make decisions regarding
27 antipsychotic medication, the offender's mental disorder requires
28 medical treatment with antipsychotic medication, and, if the
29 offender's mental disorder is not treated with antipsychotic
30 medication, it is probable that serious harm to the physical or
31 mental health of the patient will result. Probability of serious harm
32 to the physical or mental health of the offender requires evidence
33 that the offender is presently suffering adverse effects to his or her
34 physical or mental health or the offender has previously suffered
35 these effects as a result of a mental disorder and his or her condition
36 is substantially deteriorating. The fact that an offender has a
37 diagnosis of a mental disorder does not, in itself, establish
38 probability of serious harm to the physical or mental health of the
39 offender.

1 (H) ~~The offender is a danger to others, in that the offender has~~
2 ~~inflicted, attempted to inflict, or made a serious threat of inflicting~~
3 ~~substantial physical harm on another while in custody, or the~~
4 ~~offender had inflicted, attempted to inflict, or made a serious threat~~
5 ~~of inflicting substantial physical harm on another that resulted in~~
6 ~~his or her being taken into custody, and the offender presents, as~~
7 ~~a result of mental disorder or mental defect, a demonstrated danger~~
8 ~~of inflicting substantial physical harm on others. Demonstrated~~
9 ~~danger may be based on an assessment of the offender's present~~
10 ~~mental condition, including a consideration of past behavior of the~~
11 ~~offender within six years prior to the time the offender last~~
12 ~~attempted to inflict, inflicted, or threatened to inflict substantial~~
13 ~~physical harm on another, and other relevant evidence.~~

14 (iii) ~~If the court finds any of the conditions described in clause~~
15 ~~(ii) to be true, the court shall issue an order authorizing the~~
16 ~~treatment facility to involuntarily administer antipsychotic~~
17 ~~medication to the offender when and as prescribed by the offender's~~
18 ~~treating psychiatrist.~~

19 (iv) ~~In all cases, the treating hospital, facility, or program may~~
20 ~~administer medically appropriate antipsychotic medication~~
21 ~~prescribed by a psychiatrist in an emergency as described in~~
22 ~~subdivision (m) of Section 5008 of the Welfare and Institutions~~
23 ~~Code.~~

24 (v) ~~A report made pursuant to subdivision (b) shall include a~~
25 ~~description of any antipsychotic medication administered to the~~
26 ~~offender and its effects and side effects, including effects on the~~
27 ~~offender's appearance or behavior that would affect the offender's~~
28 ~~ability to understand the nature of the criminal proceedings or to~~
29 ~~assist counsel in the conduct of a defense in a reasonable manner.~~
30 ~~During the time the offender is confined in a state hospital or other~~
31 ~~treatment facility or placed on outpatient status, either the offender~~
32 ~~or the people may request that the court review an order made~~
33 ~~pursuant to this subdivision. The offender, to the same extent~~
34 ~~enjoyed by other patients in the state hospital or other treatment~~
35 ~~facility, shall have the right to contact the Patients' Rights~~
36 ~~Advocate regarding his or her rights under this section.~~

37 (C) ~~If the offender consented to antipsychotic medication as~~
38 ~~described in clause (i) of subparagraph (B), but subsequently~~
39 ~~withdraws his or her consent, or, if involuntary antipsychotic~~
40 ~~medication was not ordered pursuant to clause (ii) of subparagraph~~

~~(B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the offender for antipsychotic medication. If informed consent is not obtained from the offender, and the treating psychiatrist is of the opinion that the offender lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the offender is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the offender and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide copies of the report to the prosecuting attorney and to the attorney representing the offender and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered.~~

~~(3) When the court, after considering the placement recommendation of the county mental health director required in paragraph (2), orders that the offender be confined in a public or private treatment facility, the court shall provide copies of the following documents, which shall be taken with the offender to the treatment facility where the offender is to be confined:~~

~~(A) The commitment order, including a specification of the charges.~~

~~(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).~~

~~(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.~~

~~(D) State summary criminal history information.~~

~~(E) Arrest reports prepared by the police department or other law enforcement agency.~~

~~(F) Court-ordered psychiatric examination or evaluation reports.~~

~~(G) The county mental health director's placement recommendation report.~~

~~(4) A person subject to commitment pursuant to this section may be placed on outpatient status under the supervision of the county mental health director or his or her designee by order of the court in accordance with the procedures contained in Title 15~~

1 ~~(commencing with Section 1600) except that where the term~~
2 ~~“community program director” appears the term “county mental~~
3 ~~health director” shall be substituted.~~

4 ~~(5) (A) If the offender is committed or transferred to a public~~
5 ~~or private treatment facility approved by the county mental health~~
6 ~~director, the court may, upon receiving the written recommendation~~
7 ~~of the county mental health director, transfer the offender to another~~
8 ~~public or private treatment facility approved by the county mental~~
9 ~~health director. In the event of dismissal of the revocation~~
10 ~~proceedings before the offender recovers competence, the person~~
11 ~~shall be subject to the applicable provisions of Part 1 (commencing~~
12 ~~with Section 5000) of Division 5 of the Welfare and Institutions~~
13 ~~Code. Where either the offender or the prosecutor chooses to~~
14 ~~contest the order of transfer, a petition may be filed in the court~~
15 ~~for a hearing, which shall be held if the court determines that~~
16 ~~sufficient grounds exist. At the hearing, the prosecuting attorney~~
17 ~~or the offender may present evidence bearing on the order of~~
18 ~~transfer. The court shall use the same standards as are used in~~
19 ~~conducting probation revocation hearings pursuant to Section~~
20 ~~1203.2.~~

21 ~~(B) Prior to making an order for transfer under this paragraph,~~
22 ~~the court shall notify the offender, the attorney of record for the~~
23 ~~offender, the prosecuting attorney, and the county mental health~~
24 ~~director or his or her designee.~~

25 ~~(b) (1) Within 90 days of a commitment made pursuant to~~
26 ~~subdivision (a), the medical director of the treatment facility to~~
27 ~~which the offender is confined shall make a written report to the~~
28 ~~court and the county mental health director or his or her designee,~~
29 ~~concerning the offender’s progress toward recovery of mental~~
30 ~~competence.~~

31 ~~(2) Where the offender is on outpatient status, the outpatient~~
32 ~~treatment staff shall make a written report to the county mental~~
33 ~~health director concerning the offender’s progress toward recovery~~
34 ~~of mental competence. Within 90 days of placement on outpatient~~
35 ~~status, the county mental health director shall report to the court~~
36 ~~on this matter.~~

37 ~~(3) If the offender has not recovered mental competence, but~~
38 ~~the report discloses a substantial likelihood that the offender will~~
39 ~~regain mental competence in the foreseeable future, the offender~~
40 ~~shall remain in the treatment facility or on outpatient status.~~

1 Thereafter, at six-month intervals or until the offender becomes
2 mentally competent, reporting shall be as follows:

3 (A) Where the offender is confined in a treatment facility, the
4 medical director of the hospital or person in charge of the facility
5 shall report in writing to the court and the county mental health
6 director or a designee regarding the offender's progress toward
7 recovery of mental competence.

8 (B) Where the offender is on outpatient status, after the initial
9 90-day report, the outpatient treatment staff shall report to the
10 county mental health director on the offender's progress toward
11 recovery, and the county mental health director shall report to the
12 court on this matter at six-month intervals.

13 (4) A copy of the reports required pursuant to paragraph (3)
14 shall be provided to the prosecutor and defense counsel by the
15 court.

16 (5) If the report indicates that there is no substantial likelihood
17 that the offender will regain mental competence in the foreseeable
18 future, the committing court shall order the offender to be returned
19 to the court for proceedings pursuant to paragraph (2) of
20 subdivision (c). The court shall transmit a copy of its order to the
21 county mental health director or his or her designee.

22 (e) (1) If, at the end of one year from the date of commitment,
23 the offender has not recovered mental competence, the offender
24 shall be returned to the committing court. The court shall notify
25 the county mental health director or his or her designee of the
26 return and of any resulting court orders.

27 (2) Whenever an offender is returned to the court pursuant to
28 subdivision (b) or paragraph (1) of this subdivision and it appears
29 to the court that the offender is gravely disabled, as defined in
30 subparagraph (A) of paragraph (1) of subdivision (h) of Section
31 5008 of the Welfare and Institutions Code, the court shall order
32 the conservatorship investigator of the county of commitment of
33 the offender to initiate conservatorship proceedings for the offender
34 pursuant to Chapter 3 (commencing with Section 5350) of Part 1
35 of Division 5 of the Welfare and Institutions Code. Hearings
36 required in the conservatorship proceedings shall be held in the
37 superior court in the county that ordered the commitment. The
38 court shall transmit a copy of the order directing initiation of
39 conservatorship proceedings to the county mental health director

1 or his or her designee and shall notify the county mental health
2 director or his or her designee of the outcome of the proceedings.

3 (d) The revocation petition remains subject to dismissal. If the
4 revocation petition is dismissed, the court shall transmit a copy of
5 the order of dismissal to the county mental health director or his
6 or her designee.

7 (e) If the petition is dismissed, the offender shall be released
8 from commitment ordered pursuant to this section, but without
9 prejudice to the initiation of proceedings that may be appropriate
10 under Part 1 (commencing with Section 5000) of Division 5 of the
11 Welfare and Institutions Code.

12 SEC. 9. Section 1370.02 is added to the Penal Code, to read:

13 1370.02. (a) If the defendant is found mentally competent
14 during a postrelease community supervision or parole revocation
15 hearing, the revocation proceedings shall resume. The formal
16 hearing on the revocation shall occur within a reasonable time
17 after resumption of the proceedings, but in no event may the
18 defendant be detained in custody for over 180 days from the date
19 of arrest.

20 (b) If the defendant is found mentally incompetent, the court,
21 based upon consideration of the information and recommendations
22 contained in the expert reports required by Section 1369, shall
23 have discretion to order any of the following:

24 (1) (A) If the court determines that there is a reasonable
25 likelihood that the defendant may be restored to competency and
26 returned to court to face the revocation proceedings no later than
27 180 days from the date of the arrest of the defendant, the court
28 may order the defendant to undergo treatment as authorized by
29 Section 1370 or 1370.1 for restoring the defendant to competency,
30 except that:

31 (i) The initial written progress report due to the court pursuant
32 to subdivision (b) of Section 1370 shall be provided to the court
33 within 45 days and subsequent progress reports shall be provided
34 to the court at two-month intervals.

35 (ii) The initial written progress report due to the court under
36 subdivision (b) of Section 1370.1 shall be provided to the court
37 within 45 days and subsequent progress reports shall be provided
38 within 90 days.

1 (B) If the defendant is restored to competency within 180 days
2 of arrest, the defendant shall be returned to court under the
3 procedures required by Section 1372.

4 (C) If the defendant is not restored to competency within 180
5 days of arrest, the defendant shall be returned to court and the
6 court shall proceed under paragraph (2) or (3).

7 (2) Dismiss the pending revocation matter and return the
8 defendant to supervision. If the matter is dismissed pursuant to
9 this paragraph, the court may also:

10 (A) Modify the terms and conditions of supervision to include
11 appropriate mental health treatment.

12 (B) Refer the matter to the public guardian of the county of
13 commitment to initiate conservatorship proceedings.

14 (3) Refer the matter to any local mental health court, reentry
15 court, or other collaborative justice court available for improving
16 the mental health of the defendant.

17 (c) Notwithstanding any other law, if a person subject to parole
18 pursuant to Section 3000.1 or paragraph (4) of subdivision (b) of
19 Section 3000 is found mentally incompetent, the court, upon a
20 finding of probable cause that the person violated a term or
21 condition of parole, shall remand the person to the custody of the
22 Department of Corrections and Rehabilitation and the jurisdiction
23 of the Board of Parole Hearings for the purpose of future parole
24 consideration. If the court finds no probable cause to believe that
25 the person violated a term or condition of parole, the court may
26 proceed under paragraph (2) or (3) of subdivision (b), or both.

27 ~~SEC. 5. Section 1370.03 is added to the Penal Code, to read:~~

28 ~~1370.03. (a) If the offender is found mentally competent, the~~
29 ~~mandatory supervision revocation proceedings shall resume. If the~~
30 ~~offender is found mentally incompetent, the revocation proceedings~~
31 ~~shall be suspended until the person becomes mentally competent,~~
32 ~~and the court shall order the commencement of the treatment and~~
33 ~~determination process specified in subdivisions (a) and (b) of~~
34 ~~Section 1370.02.~~

35 ~~(b) If, at the end of the maximum term of commitment imposed~~
36 ~~at the original sentencing hearing pursuant to subdivision (h) of~~
37 ~~Section 1170 of the Penal Code, the offender has not recovered~~
38 ~~mental competence, the offender shall be returned to the~~
39 ~~committing court. The court shall notify the county mental health~~

1 ~~director or his or her designee of the return and of any resulting~~
2 ~~court orders.~~

3 ~~(e) Whenever an offender is returned to the court without~~
4 ~~recovering mental competence or upon a finding that it is unlikely~~
5 ~~that the person will regain mental competence pursuant to~~
6 ~~paragraph (5) of subdivision (b) of Section 1370.02, and it appears~~
7 ~~to the court that the offender is gravely disabled, as defined in~~
8 ~~subparagraph (A) of paragraph (1) of subdivision (h) of Section~~
9 ~~5008 of the Welfare and Institutions Code, the court shall order~~
10 ~~the conservatorship investigator of the county of commitment of~~
11 ~~the offender to initiate conservatorship proceedings for the offender~~
12 ~~pursuant to Chapter 3 (commencing with Section 5350) of Part 1~~
13 ~~of Division 5 of the Welfare and Institutions Code. Hearings~~
14 ~~required in the conservatorship proceedings shall be held in the~~
15 ~~superior court in the county that ordered the commitment. The~~
16 ~~court shall transmit a copy of the order directing initiation of~~
17 ~~conservatorship proceedings to the county mental health director~~
18 ~~or his or her designee and shall notify the county mental health~~
19 ~~director or his or her designee of the outcome of the proceedings.~~

20 ~~(d) If the offender completes the full term originally imposed,~~
21 ~~the offender shall be released from any commitment ordered under~~
22 ~~this section, but without prejudice to the initiation of any~~
23 ~~proceedings which may be appropriate under Part 1 (commencing~~
24 ~~with Section 5000) of Division 5 of the Welfare and Institutions~~
25 ~~Code.~~

26 *SEC. 10. Section 1370.1 of the Penal Code is amended to read:*

27 1370.1. (a) (1) (A) If the defendant is found mentally
28 competent, the criminal process shall resume, the trial on the
29 offense charged *or hearing on the alleged violation* shall proceed,
30 and judgment may be pronounced.

31 (B) If the defendant is found mentally incompetent and is
32 developmentally disabled, the trial or judgment shall be suspended
33 until the defendant becomes mentally competent.

34 (i) Except as provided in clause (ii) or (iii), the court shall
35 consider a recommendation for placement, which recommendation
36 shall be made to the court by the director of a regional center or
37 designee. In the meantime, the court shall order that the mentally
38 incompetent defendant be delivered by the sheriff or other person
39 designated by the court to a state hospital or developmental center
40 for the care and treatment of the developmentally disabled or any

1 other available residential facility approved by the director of a
2 regional center for the developmentally disabled established under
3 Division 4.5 (commencing with Section 4500) of the Welfare and
4 Institutions Code as will promote the defendant's speedy attainment
5 of mental competence, or be placed on outpatient status pursuant
6 to the provisions of Section 1370.4 and Title 15 (commencing with
7 Section 1600).

8 (ii) However, if the action against the defendant who has been
9 found mentally incompetent is on a complaint charging a felony
10 offense specified in Section 290, the prosecutor shall determine
11 whether the defendant previously has been found mentally
12 incompetent to stand trial pursuant to this chapter on a charge of
13 a Section 290 offense, or whether the defendant is currently the
14 subject of a pending Section 1368 proceeding arising out of a
15 charge of a Section 290 offense. If either determination is made,
16 the prosecutor shall so notify the court and defendant in writing.
17 After this notification, and opportunity for hearing, the court shall
18 order that the defendant be delivered by the sheriff to a state
19 hospital or other secure treatment facility for the care and treatment
20 of the developmentally disabled unless the court makes specific
21 findings on the record that an alternative placement would provide
22 more appropriate treatment for the defendant and would not pose
23 a danger to the health and safety of others.

24 (iii) If the action against the defendant who has been found
25 mentally incompetent is on a complaint charging a felony offense
26 specified in Section 290 and the defendant has been denied bail
27 pursuant to subdivision (b) of Section 12 of Article I of the
28 California Constitution because the court has found, based upon
29 clear and convincing evidence, a substantial likelihood that the
30 person's release would result in great bodily harm to others, the
31 court shall order that the defendant be delivered by the sheriff to
32 a state hospital for the care and treatment of the developmentally
33 disabled unless the court makes specific findings on the record
34 that an alternative placement would provide more appropriate
35 treatment for the defendant and would not pose a danger to the
36 health and safety of others.

37 (iv) The clerk of the court shall notify the Department of Justice
38 in writing of any finding of mental incompetence with respect to
39 a defendant who is subject to clause (ii) or (iii) for inclusion in his
40 or her state summary criminal history information.

1 (C) Upon becoming competent, the court shall order that the
2 defendant be returned to the committing court pursuant to the
3 procedures set forth in paragraph (2) of subdivision (a) of Section
4 1372 or by another person designated by the court. The court shall
5 further determine conditions under which the person may be absent
6 from the placement for medical treatment, social visits, and other
7 similar activities. Required levels of supervision and security for
8 these activities shall be specified.

9 (D) The court shall transmit a copy of its order to the regional
10 center director or designee and to the Director of Developmental
11 Services.

12 (E) A defendant charged with a violent felony may not be placed
13 in a facility or delivered to a state hospital, developmental center,
14 or residential facility pursuant to this subdivision unless the facility,
15 state hospital, developmental center, or residential facility has a
16 secured perimeter or a locked and controlled treatment facility,
17 and the judge determines that the public safety will be protected.

18 (F) For purposes of this paragraph, “violent felony” means an
19 offense specified in subdivision (c) of Section 667.5.

20 (G) A defendant charged with a violent felony may be placed
21 on outpatient status, as specified in Section 1370.4 or 1600, only
22 if the court finds that the placement will not pose a danger to the
23 health or safety of others.

24 (H) As used in this section, “developmental disability” means
25 a disability that originates before an individual attains 18 years of
26 age, continues, or can be expected to continue, indefinitely and
27 constitutes a substantial handicap for the individual, and shall not
28 include other handicapping conditions that are solely physical in
29 nature. As defined by the Director of Developmental Services, in
30 consultation with the Superintendent of Public Instruction, this
31 term shall include intellectual disability, cerebral palsy, epilepsy,
32 and autism. This term shall also include handicapping conditions
33 found to be closely related to intellectual disability or to require
34 treatment similar to that required for individuals with an intellectual
35 disability, but shall not include other handicapping conditions that
36 are solely physical in nature.

37 (2) Prior to making the order directing that the defendant be
38 confined in a state hospital, developmental center, or other
39 residential facility, or be placed on outpatient status, the court shall
40 order the regional center director or designee to evaluate the

1 defendant and to submit to the court within 15 judicial days of the
2 order a written recommendation as to whether the defendant should
3 be committed to a state hospital or developmental center or to any
4 other available residential facility approved by the regional center
5 director. A person shall not be admitted to a state hospital,
6 developmental center, or other residential facility or accepted for
7 outpatient status under Section 1370.4 without having been
8 evaluated by the regional center director or designee.

9 (3) When the court orders that the defendant be confined in a
10 state hospital or other secure treatment facility pursuant to clause
11 (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall
12 provide copies of the following documents which shall be taken
13 with the defendant to the state hospital or other secure treatment
14 facility where the defendant is to be confined:

15 (A) State summary criminal history information.

16 (B) Any arrest reports prepared by the police department or
17 other law enforcement agency.

18 (C) Records of a finding of mental incompetence pursuant to
19 this chapter arising out of a complaint charging a felony offense
20 specified in Section 290 or a pending Section 1368 proceeding
21 arising out of a charge of a Section 290 offense.

22 (4) When the defendant is committed to a residential facility
23 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
24 court makes the findings specified in clause (ii) or (iii) of
25 subparagraph (B) of paragraph (1) to assign the defendant to a
26 facility other than a state hospital or other secure treatment facility,
27 the court shall order that notice be given to the appropriate law
28 enforcement agency or agencies having local jurisdiction at the
29 site of the placement facility of a finding of mental incompetence
30 pursuant to this chapter arising out of a charge of a Section 290
31 offense.

32 (5) (A) If the defendant is committed or transferred to a state
33 hospital or developmental center pursuant to this section, the court
34 may, upon receiving the written recommendation of the executive
35 director of the state hospital or developmental center and the
36 regional center director that the defendant be transferred to a
37 residential facility approved by the regional center director, order
38 the defendant transferred to that facility. If the defendant is
39 committed or transferred to a residential facility approved by the
40 regional center director, the court may, upon receiving the written

1 recommendation of the regional center director, transfer the
2 defendant to a state hospital or developmental center or to another
3 residential facility approved by the regional center director.

4 In the event of dismissal of the criminal ~~charges~~ *action or*
5 *revocation proceedings* before the defendant recovers competence,
6 the person shall be subject to the applicable provisions of the
7 Lanterman-Petris-Short Act (Part 1 (commencing with Section
8 5000) of Division 5 of the Welfare and Institutions Code) or to
9 commitment or detention pursuant to a petition filed pursuant to
10 Section 6502 of the Welfare and Institutions Code.

11 The defendant or prosecuting attorney may contest either kind
12 of order of transfer by filing a petition with the court for a hearing,
13 which shall be held if the court determines that sufficient grounds
14 exist. At the hearing, the prosecuting attorney or the defendant
15 may present evidence bearing on the order of transfer. The court
16 shall use the same standards as used in conducting probation
17 revocation hearings pursuant to Section 1203.2.

18 Prior to making an order for transfer under this section, the court
19 shall notify the defendant, the attorney of record for the defendant,
20 the prosecuting attorney, and the regional center director or
21 designee.

22 (B) If the defendant is committed to a state hospital or secure
23 treatment facility pursuant to clause (ii) or (iii) of subparagraph
24 (B) of paragraph (1) and is subsequently transferred to another
25 facility, copies of the documents specified in paragraph (3) shall
26 be taken with the defendant to the new facility. The transferring
27 facility shall also notify the appropriate law enforcement agency
28 or agencies having local jurisdiction at the site of the new facility
29 that the defendant is a person subject to clause (ii) or (iii) of
30 subparagraph (B) of paragraph (1).

31 (b) (1) Within 90 days of admission of a person committed
32 pursuant to subdivision (a), the executive director or designee of
33 the state hospital, developmental center, or other facility to which
34 the defendant is committed, or the outpatient supervisor where the
35 defendant is placed on outpatient status, shall make a written report
36 to the committing court and the regional center director or a
37 designee concerning the defendant's progress toward becoming
38 mentally competent. If the defendant has not become mentally
39 competent, but the report discloses a substantial likelihood the
40 defendant will become mentally competent within the next 90

1 days, the court may order that the defendant shall remain in the
2 state hospital, developmental center, or other facility or on
3 outpatient status for that period of time. Within 150 days of an
4 admission made pursuant to subdivision (a) or if the defendant
5 becomes mentally competent, the executive director or designee
6 of the hospital or developmental center or person in charge of the
7 facility or the outpatient supervisor shall report to the court and
8 the regional center director or his or her designee regarding the
9 defendant's progress toward becoming mentally competent. The
10 court shall provide to the prosecutor and defense counsel copies
11 of all reports under this section. If the report indicates that there
12 is no substantial likelihood that the defendant has become mentally
13 competent, the committing court shall order the defendant to be
14 returned to the court for proceedings pursuant to paragraph (2) of
15 subdivision (c). The court shall transmit a copy of its order to the
16 regional center director or designee and to the executive director
17 of the developmental center.

18 (2) A defendant who has been committed or has been on
19 outpatient status for 18 months, and is still hospitalized or on
20 outpatient status, shall be returned to the committing court where
21 a hearing shall be held pursuant to the procedures set forth in
22 Section 1369. The court shall transmit a copy of its order to the
23 regional center director or designee and the executive director of
24 the developmental center.

25 (3) If it is determined by the court that no treatment for the
26 defendant's mental impairment is being conducted, the defendant
27 shall be returned to the committing court. A copy of this order
28 shall be sent to the regional center director or designee and to the
29 executive director of the developmental center.

30 (4) At each review by the court specified in this subdivision,
31 the court shall determine if the security level of housing and
32 treatment is appropriate and may make an order in accordance
33 with its determination.

34 (c) (1) (A) At the end of three years from the date of
35 commitment or a period of commitment equal to the maximum
36 term of imprisonment provided by law for the most serious offense
37 charged in the information, indictment, or misdemeanor complaint,
38 *or the maximum term of imprisonment provided by law for a*
39 *violation of probation or mandatory supervision, whichever is*

1 shorter, a defendant who has not become mentally competent shall
2 be returned to the committing court.

3 (B) The court shall notify the regional center director or designee
4 and the executive director of the developmental center of that
5 return and of any resulting court orders.

6 (2) ~~In~~(A) *Except as provided in subparagraph (B), in the event*
7 *of dismissal of the criminal charges before the defendant becomes*
8 *mentally competent, the defendant shall be subject to the applicable*
9 *provisions of the Lanterman-Petris-Short Act (Part 1 (commencing*
10 *with Section 5000) of Division 5 of the Welfare and Institutions*
11 *Code), or to commitment and detention pursuant to a petition filed*
12 *pursuant to Section 6502 of the Welfare and Institutions Code. If*
13 *it is found that the person is not subject to commitment or detention*
14 *pursuant to the applicable provision of the Lanterman-Petris-Short*
15 *Act (Part 1 (commencing with Section 5000) of Division 5 of the*
16 *Welfare and Institutions Code) or to commitment or detention*
17 *pursuant to a petition filed pursuant to Section 6502 of the Welfare*
18 *and Institutions Code, the individual shall not be subject to further*
19 *confinement pursuant to this article and the criminal action remains*
20 *subject to dismissal pursuant to Section 1385. The court shall notify*
21 *the regional center director and the executive director of the*
22 *developmental center of any dismissal.*

23 (B) *In revocation proceedings alleging a violation of mandatory*
24 *supervision in which the defendant remains incompetent upon*
25 *return to court under subparagraph (A), the defendant shall be*
26 *subject to the applicable provisions of the Lanterman-Petris-Short*
27 *Act (Part 1 (commencing with Section 5000) of Division 5 of the*
28 *Welfare and Institutions Code), or to commitment and detention*
29 *pursuant to a petition filed pursuant to Section 6502 of the Welfare*
30 *and Institutions Code. If it is found that the person is not subject*
31 *to commitment or detention pursuant to the applicable provision*
32 *of the Lanterman-Petris-Short Act (Part 1 (commencing with*
33 *Section 5000) of Division 5 of the Welfare and Institutions Code)*
34 *or to commitment or detention pursuant to a petition filed pursuant*
35 *to Section 6502 of the Welfare and Institutions Code, the court*
36 *shall reinstate mandatory supervision and modify the terms and*
37 *conditions of supervision to include appropriate mental health*
38 *treatment or refer the matter to a local mental health court, reentry*
39 *court, or other collaborative justice court available for improving*
40 *the mental health of the defendant. Actions alleging a violation of*

1 *mandatory supervision shall not be subject to dismissal under*
2 *Section 1385.*

3 (d) ~~Notwithstanding any other provision of this section, Except~~
4 ~~as provided in subparagraph (B) of paragraph (2) of subdivision~~
5 ~~(c), the criminal action remains subject to dismissal pursuant to~~
6 ~~Section 1385. If at any time prior to the maximum period of time~~
7 ~~allowed for proceedings under this article, the regional center~~
8 ~~director concludes that the behavior of the defendant related to the~~
9 ~~defendant's criminal offense has been eliminated during time spent~~
10 ~~in court-ordered programs, the court may, upon recommendation~~
11 ~~of the regional center director, dismiss the criminal charges. The~~
12 ~~court shall transmit a copy of any order of dismissal to the regional~~
13 ~~center director and to the executive director of the developmental~~
14 ~~center.~~

15 (e) For the purpose of this section, "secure treatment facility"
16 shall not include, except for state mental hospitals, state
17 developmental centers, and correctional treatment facilities, a
18 facility licensed pursuant to Chapter 2 (commencing with Section
19 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
20 3.2 (commencing with Section 1569) of, Division 2 of the Health
21 and Safety Code, or a community board and care facility.

22 ~~SEC. 6.~~

23 *SEC. 11.* Section 1370.5 of the Penal Code is amended to read:

24 1370.5. (a) A person committed to a state hospital or other
25 public or private mental health facility pursuant to the provisions
26 of Section 1370, 1370.01, 1370.02, ~~1370.03~~, or 1370.1, who
27 escapes from or who escapes while being conveyed to or from a
28 state hospital or facility, is punishable by imprisonment in a county
29 jail not to exceed one year or in the state prison for a determinate
30 term of one year and one day. The term of imprisonment imposed
31 pursuant to this section shall be served consecutively to any other
32 sentence or commitment.

33 (b) The medical director or person in charge of a state hospital
34 or other public or private mental health facility to which a person
35 has been committed pursuant to the provisions of Section 1370,
36 1370.01, 1370.02, ~~1370.03~~, or 1370.1 shall promptly notify the
37 chief of police of the city in which the hospital or facility is located,
38 or the sheriff of the county if the hospital or facility is located in
39 an unincorporated area, of the escape of the person, and shall
40 request the assistance of the chief of police or sheriff in

1 apprehending the person, and shall within 48 hours of the escape
2 of the person orally notify the court that made the commitment,
3 the prosecutor in the case, and the Department of Justice of the
4 escape.

5 *SEC. 12. Section 1371 of the Penal Code is amended to read:*

6 1371. The commitment of the defendant, as described in
7 ~~Section 1370 or 1370.01~~, 1370, 1370.1, or 1370.02, exonerates
8 his or her bail, or entitles a person, authorized to receive the
9 property of the defendant, to a return of any money he or she may
10 have deposited instead of bail, or gives, to the person or persons
11 found by the court to have deposited any money instead of bail on
12 behalf of the defendant, a right to the return of that money.

13 *SEC. 13. Section 1373 of the Penal Code is amended to read:*

14 1373. The expense of sending the defendant to the state hospital
15 or other facility, and of bringing him back, are chargeable to the
16 county in which the indictment was ~~found or found~~, information
17 was filed, or revocation proceeding was held; but the county may
18 recover them from the estate of the defendant, if he has any, or
19 from a relative, bound to provide for and maintain him.

20 ~~SEC. 7.~~

21 *SEC. 14. Section 1375.5 of the Penal Code is amended to read:*

22 1375.5. (a) Time spent by a defendant in a hospital or other
23 facility as a result of a commitment therein as a mentally
24 incompetent pursuant to this chapter shall be credited on the term
25 of imprisonment, if any, for which the defendant is sentenced in
26 the criminal case which was suspended pursuant to Section 1370
27 or 1370.1.

28 (b) Time spent by an offender in a hospital or other facility as
29 a result of a commitment as a mentally incompetent pursuant to
30 Section 1370.02 ~~or 1370.03~~ shall be credited toward any period
31 of revocation or remaining ~~mandatory supervision~~ term of
32 supervision that was suspended.

33 (c) As used in this section, “time spent in a hospital or other
34 facility” includes days a defendant is treated as an outpatient
35 pursuant to Title 15 (commencing with Section 1600) of Part 2.

36 ~~SEC. 8.~~

37 *SEC. 15. If the Commission on State Mandates determines that*
38 *this act contains costs mandated by the state, reimbursement to*
39 *local agencies and school districts for those costs shall be made*

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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